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**JAN 27 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Paul Kleinberger, et al. :  
Application No. 09/987,793 :  
Filed: November 16, 2001 :  
Attorney Docket No. 01/22875 :

**ON PETITION**

This is a decision on the renewed petition under 37 CFR 1.137(b), filed January 10, 2005, to revive the above-identified application.

The petition is **GRANTED**.

Since this application was abandoned for failure to timely reply to the Final Office action of October 28, 2003 within the extendible six-month period provided therefor, the Examiner had no procedural authority with respect to the abandoned application. See Lorenz v. Finkl, 333 F.2d 885, 891, 142 USPQ 26, 30 (CCPA 1964). Therefore, the examiner was without authority to act further in the case absent a grantable petition reviving the application. Nevertheless, in view of this decision on petition, the subsequent action taken by the examiner, i.e., mailing of the Non-Final Office Action, has been ratified. In view thereof, it is unnecessary to either vacate or remail the Non-Final Notice of December 23, 2004.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

The application file is being forwarded to Technology Center 2800, Art Unit 2872 for further processing.

Retta Williams  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy